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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re EDDIE RONELL JONES	G043733
on Habeas Corpus.	(Super. Ct. No. M-12953)
	O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Thomas M. Goethals, Judge. Affirmed as modified.

Edmund G. Brown, Jr., and Kamala D. Harris, Attorneys General, Julie L. Garland, Assistant Attorney General, Julie A. Malone and Charles Chung, Deputy Attorneys General for Appellant.

Stephen M. Defilippis, under appointment by the Court of Appeal, for Respondent.

* * *

This appeal is a companion case to (*In re Jones* (Mar. 30, 2011, G043490) [nonpub. opn.].) In that case, the Governor reversed a Board of Parole Hearings's (the Board) August 13, 2008 decision finding respondent Eddie Ronell Jones suitable for parole. The superior court vacated the Governor's reversal, but remanded the matter to him for reconsideration in light of the Supreme Court's then recent decision in *In re Lawrence* (2008) 44 Cal.4th 1181. While the prior action was still pending, a different two-member Board panel conducted another parole consideration hearing on August 7, 2009. This panel found Jones was not suitable for parole and denied any further review of Jones's case for three years.

Jones filed the present action challenging the August 2009 decision. The court appointed counsel to represent him and ordered the Attorney General to show cause why the relief sought should not be granted. After receiving a return to the petition and Jones's traverse, the court granted the petition and remanded the matter to the Board for a new hearing. The Attorney General timely filed an appeal from the decision.

We shall affirm the superior court's decision to vacate the Board's August 2009 parole unsuitability finding, but modify it to delete the direction to the Board to conduct a new parole suitability hearing.

FACTS AND PROCEDURAL BACKGROUND

The facts underlying Jones's precommitment offense, lifestyle, and his commitment offense are summarized in *In re Jones, supra*, G043490. At the 2009 hearing, the Board also relied on the same psychological evaluation that had been prepared for the August 2008 hearing.

Jones told the Board that while the events of the murder remained the same, "I changed my way of viewing things. . . . When I was 17 . . . I went in the[house] to

rescue Rachel [C.] . . . although I don't see it that way now . . . ." He currently views the crime as "two young men that went into a house and beat a man with no right to" do so. He now understood "that not only is violence not the only solution, it should not be an option." Under questioning by a member of the Orange County District Attorney's Office, Jones took "full responsibility for th[e] crime" and acknowledged Hopking's murder "was barbaric[;] I showed a total disregard for human life."

At the hearing, Jones submitted to the Board a recently prepared letter of apology that was read into the record. He also reported having enrolled in an ongoing self-help therapy class entitled Timeless that "touch[es] on all subjects," including "the negative impact we all had on the community and on trying to view things . . . through the eyes of the family . . . ." In addition, Jones acknowledged reading two self-help books.

Petitioner's parole release plans remained the same; however because his grandmother had recently suffered a stroke, there was some discussion of having him live in a halfway house if released on parole. Petitioner said he was willing to accept that condition.

The Board found Jones unsuitable for parole and determined he could not reapply for parole for another three years. It acknowledged several factors supported a finding Jones was suitable for parole; "his past and present mental state and attitudes toward the crime," including his "tak[ing] responsibility . . . for th[e] commitment offense," the "supportive" 2008 psychological evaluation, Jones's remorse, and his "institutional adjustment . . . ." However, the Board based its denial on three factors: "the gravity of the commitment offense," Jones's "unstable social history growing up and his problematic relationship and his lifestyle," and what it described as his "need[] to continue to develop his insight into the causative factors of this crime," such as "why we go back into [the] residence, the time factors, what is the time factor between picking up a rock and going into the residence . . . . Why was it necessary to strike [Hopking]

numerous times and cause his death. Those kinds of issues are still a factor in terms of what the Board is considering in terms of insight . . . ."

The trial court granted the petition for a writ of habeas corpus and directed the Board to rehear the matter, noting "[i]t does not appear that there is any tangible, credible evidence in the record supporting the [Board's] ultimate conclusion that [p]etitioner remains a current danger."

DISCUSSION

1. The Board's Decision

On appeal, the Attorney General seeks reversal of the superior court's decision claiming there is "some evidence" supporting the Board's decision. Initially, we note that, while the Board is entitled to appeal from the order granting relief in habeas corpus (Pen. Code, § 1507), the California Rules of Court require appellate briefs to comply with the rules governing criminal appeals. (Cal. Rules of Court, rule 8.388(a).) Here, the opening brief's limited summary of the appellate record fails to comply with the requirement that it contain "a summary of the significant facts." (Cal. Rules of Court, rules 8.204(a)(2)(C); 8.360(a); see *In re S.C.* (2006) 138 Cal.App.4th 396, 402.) However, the record contains no indication the trial court received or considered any oral testimony. In light of the fact "the trial court's findings were based solely upon documentary evidence," "we independently review the record" on appeal. (*In re Rosenkrantz* (2002) 29 Cal.4th 616, 677.)

As noted, the Board based its decision on three factors: the gravity of Jones's commitment offense, his precommitment offense social history, and what it described as his lack of insight. The record fails to reflect evidence these factors support a finding Jones currently presents a danger to society.

As for the gravity of the commitment offense, *In re Lawrence, supra,* 44 Cal.4th 1181 held "although the Board . . . may rely upon the aggravated circumstances of the commitment offense as a basis for a decision denying parole, the aggravated nature of the crime does not in and of itself provide some evidence of *current* dangerousness to the public unless the record also establishes that something in the prisoner's pre- or postincarceration history, or his or her current demeanor and mental state, indicates that the implications regarding the prisoner's dangerousness that derive from his or her commission of the commitment offense remain probative of the statutory determination of a continuing threat to public safety." (*Id.* at p. 1214.)

The Attorney General suggests that, although Jones was convicted of second degree murder, "[t]he record reasonably indicates that [he] premeditated the murder . . . ." But in *Lawrence,* the Supreme Court rejected the theory of "determin[ing] whether a crime is particularly egregious, by . . . whether 'the violence or viciousness of the inmate's crime [was] more than minimally necessary to convict [defendant] of the offense for which he [or she is] confined[]'" (*In re Lawrence, supra,* 44 Cal.4th at p. 1218) because that standard "functionally removes consideration of relevant suitability factors[,] . . . fails to assess *current* dangerousness, [and] substantially undermines the rehabilitative goals of the governing statutes" (*id.* at p. 1220, fn. omitted). Accordingly, "[i]n some cases . . . in which evidence of the inmate's rehabilitation and suitability for parole under the governing statutes and regulations is overwhelming, the only evidence related to unsuitability is the gravity of the commitment offense, and that offense is both temporally remote and mitigated by circumstances indicating the conduct is unlikely to recur, the immutable circumstance that the commitment offense involved aggravated conduct does not provide 'some evidence' *inevitably* supporting the ultimate decision that the inmate remains a threat to public safety." (*Id.* at p. 1191.)

The same analysis applies to the Board's reliance on Jones's precommitment offense social history. "'An "[u]nstable [s]ocial [h]istory," which is

defined as "a history of unstable or tumultuous relationships with others," is one circumstance tending to show unsuitability. [Citation.]' [Citation.] . . . [L]ike [the] commitment offense, [it] is an 'immutable' fact, and thus insufficient by itself to prove unsuitability." (*In re Shippman* (2010) 185 Cal.App.4th 446, 458; see also *In re Roderick* (2007) 154 Cal.App.4th 242, 267.) Here, the record reflects Jones has specific plans for where he will live and how he will support himself if paroled. Furthermore, not only did Jones have no precommitment offense criminal record, but in prison he improved himself educationally, vocationally, and emotionally, plus submitted laudatory letters from prison officials about his work performance and behavior.

The only remaining factor cited by the Board was what it described as his lack of "insight into the causative factors of th[e commitment offense]." At the hearing, Jones explained he "just acted impulsively," "didn't ask any questions," and "began to hit [Hopking]" when the victim attempted to defend himself. "[W]hen I was 17 I truly believed that, although this sounds barbaric, . . . aggression and violence was an option, was the option to solve problems . . . . And so I felt that . . . was the way to handle th[e] situation." Now, Jones no longer feels the same way as he did as a teenager. These statements fully answered the queries mentioned by the Board which merely focused on the immutable aspects of Hopking's murder.

In support of this factor, the Attorney General focuses on Jones's self-defense and defense of others claim at trial and the differences between his description of the events surrounding the murder and what the trial evidence suggested occurred. Again, the record fails to support the Board's finding. "[A]cceptance of responsibility works in favor of release '[no] matter how longstanding or recent it is,' so long as the inmate 'genuinely accepts responsibility . . . .' [Citation.]" (*In re Elkins* (2006) 144 Cal.App.4th 475, 495, quoting *In re Lee* (2006) 143 Cal.App.4th 1400, 1414.) In addition, "an inmate need not agree or adopt the official version of a crime in order to demonstrate insight and remorse. [Citation.]" (*In re Twinn* (2010) 190 Cal.App.4th 447,

466; see also *In re Palermo* (2009) 171 Cal.App.4th 1096, 1110-1112, disapproved on another ground in *In re Prather* (2010) 50 Cal.4th 238, 252-253.)

Further, the Board acknowledged Jones's "supportive" psychological evaluation that measured both his psychopathy level and the likelihood of future violence as falling in the very low range, Jones's "past and present mental state and attitudes toward th[e] crime," including the fact he "takes responsibility by his own words for this offense . . . ." In light of these findings, the Board's reliance on lack of insight to deny parole lacks evidentiary support.

2. Remedy

In this case, the trial court directed the Board "to hold a new hearing" on Jones's suitability for parole "within 120 days of the date of service of this order . . . ." At the Attorney General's request we stayed the new parole suitability hearing pending the resolution of this appeal.

However, in the companion case (*In re Jones, supra,* G043490), the Attorney General appealed from an order that vacated the Governor's reversal of an August 2008 Board decision granting Jones parole and reinstated the Board's ruling. There the Attorney General petitioned for a writ of supersedeas to stay Jones's release, but we denied the request. As a result, Jones was released from prison on parole.

In *In re Prather, supra,* 50 Cal.4th 238, the Supreme Court held "a decision granting habeas corpus relief in these circumstances generally should direct the Board to conduct a new parole-suitability hearing in accordance with due process of law and consistent with the decision of the court . . . . (*Id.* at p. 244.) But *In re Miranda* (2011) 191 Cal.App.4th 757 recognized that where an inmate "has been released, there is no beneficial remedy available from this court." (*Id.* at p. 763.) Under the peculiar circumstances of this case, we conclude the proper resolution is to simply modify the trial

court's decision to delete the direction to hold a new parole suitability hearing and, as so modified, affirm the order granting the habeas corpus petition.

DISPOSITION

The matter is remanded to the superior court with directions to modify its order granting Eddie Ronell Jones's petition for a writ of habeas corpus by deleting the direction that the Board of Parole Hearings hold a new parole suitability hearing. As so modified, the order is affirmed.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

O'LEARY, J.

ARONSON, J.